

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

JUN 29 2016

Clerk, U S District Court
District Of Montana
Missoula

STEPHEN P. KELLY,

Plaintiff,

vs.

BNSF RAILWAY COMPANY,
MONTANA RAIL LINK, INC.,
THOMAS WALSH, and CARL R. ICE.,

Defendants.

CV 15-64-H-DLC-JTJ

ORDER

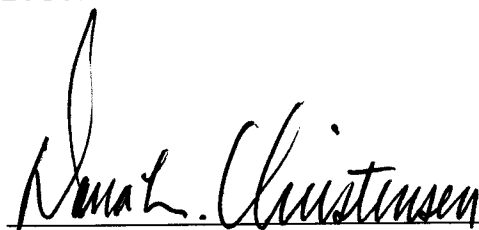
United States Magistrate Judge John T. Johnston entered findings and recommendations in this case on May 11, 2016, recommending that Defendants' various motions to dismiss be granted and Plaintiff Stephen P. Kelly's ("Kelly") action be dismissed. Kelly did not object to the findings and recommendations, and so has waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir.

2000) (citations omitted).

Having reviewed the findings and recommendations, the Court finds no clear error in Judge Johnston's conclusions that: (1) the Court lacks personal jurisdiction over Defendant Carl Ice, and Kelly nevertheless fails to assert any allegations against him; (2) Kelly's claims against Defendants BNSF Railway Company and Montana Rail Link, Inc. are preempted by federal law; and (3) Kelly fails to assert any allegations against Defendant Thomas Walsh.

Accordingly, IT IS ORDERED that Judge Johnston's findings and recommendations (Doc. 27) are ADOPTED IN FULL. Defendants respective motions to dismiss (Docs. 12, 14, 16, 18) are GRANTED. This case is DISMISSED, and the Clerk of Court shall enter judgment in favor of Defendants.

DATED this 29th day of June, 2016.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court